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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,875	07/19/2001	Jens Ehlers	1998/G-021	8024
23416	7590	03/22/2004	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			RABAGO, ROBERTO	
			ART UNIT	PAPER NUMBER

1713

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/787,875

Applicant(s)

EHLERS ET AL.

Examiner

Roberto Rábago

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/13/2004 has been entered.

2. Rejection over Lassalle '424 is withdrawn in view of amendment requiring average particle size, in combination with applicants' analysis of the average particle size of the reference polymers. The remarks of item 13 of the Office action mailed 8/22/2003 are withdrawn in view of newly-located prior art as set forth below.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Spencer et al. (US 5,633,419).

The reference discloses in Comparative Examples 1-6 and 15 a slurry polymerization method at 85°C and 1205 kPa wherein the resulting polymers include the claimed bulk density and particle size (see Table 7). Although the reference has not measured MFR<sub>15</sub> values, the measured I<sub>10</sub> values indicate that the cited polymers would necessarily include the claimed MFR<sub>15</sub> values. Although the reference has not

Art Unit: 1713

measured the  $M_w/M_n$  values, the ordinarily skilled worker would conclude that the cited polymers inherently have the claimed  $M_w/M_n$  values because applicants' claimed scope includes virtually the entire range of conventional values. The reference method includes the contact of a Ti(IV) compound with an organoaluminum compound in a solvent, and the record includes no evidence or basis to believe that the additional contact conditions specified in the product-by-process portion of the claims (directed to the making of the catalyst) would exclude the reference polymers from the broad scope of the claims. The burden of proof is shifted to applicants to show that the applied reference examples do not contain all claimed limitations. *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

4. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Marchand et al. (US 4,910,272).

The reference discloses in Examples 1(B) a slurry polymerization method at 85°C and 50 psig wherein the resulting polymers include the claimed bulk density and particle size. Although the reference has not measured  $MFR_{15}$  values, the measured  $I_{10}$  values indicate that the cited polymers would necessarily include the claimed  $MFR_{15}$  values. Although the reference has not measured the  $M_w/M_n$  values, the ordinarily skilled worker would conclude that the cited polymers inherently have the claimed  $M_w/M_n$  values because applicants' claimed scope includes virtually the entire range of conventional values. The reference method includes the contact of a Ti(IV) compound with an organoaluminum compound in a solvent, and the record includes no evidence or

Art Unit: 1713

basis to believe that the additional contact conditions specified in the product-by-process portion of the claims (directed to the making of the catalyst) would exclude the reference polymers from the broad scope of the claims. The burden of proof is shifted to applicants to show that the applied reference examples do not contain all claimed limitations. In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

5. Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Heinrich et al. (US 5,292,837)

The reference discloses in Comparative Examples C a slurry polymerization method at 85°C and 7 bar wherein the resulting polymers include the claimed bulk density and particle size (see Table 7). Although the reference has not measured MFR<sub>15</sub> values, the measured MFR<sub>21</sub> values indicate that the cited polymers would necessarily include the claimed MFR<sub>15</sub> values. Although the reference has not measured the M<sub>w</sub>/M<sub>n</sub> values, the ordinarily skilled worker would conclude that the cited polymers inherently have the claimed M<sub>w</sub>/M<sub>n</sub> values because applicants' claimed scope includes virtually the entire range of conventional values. The reference method includes the contact of a Ti(IV) compound with an organoaluminum compound in a solvent, and the record includes no evidence or basis to believe that the additional contact conditions specified in the product-by-process portion of the claims (directed to the making of the catalyst) would exclude the reference polymers from the broad scope of the claims. The burden of proof is shifted to applicants to show that the applied

Art Unit: 1713

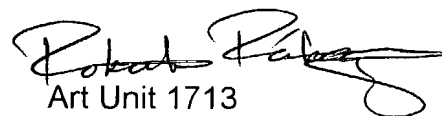
reference examples do not contain all claimed limitations. In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberto Rábago whose telephone number is (571) 272-1109. The examiner can normally be reached on Monday - Friday from 8:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**ROBERTO RABAGO**  
**PATENT EXAMINER**



Art Unit 1713

RR  
March 15, 2004